IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITON NO. 1199 OF 2003

Jyothi N. Kotian and other ... Petiteiorns

Vs.

The Municipal Commissioner,
Municipal Corporation of Gr. Mumbai...Respondetns

Mr. V.P. Patil for Petitonr.

CORAM : F.I. REBELLO,J.
DATED : DECEMBER 17, 2004

P.C.

. The Petitioners had filed a complaint under M.R.T.U. & P.U.L.P. Act invoking Item 6 and 9 of Schedule IV. The case of the Petitioners was that they were recruited as Laboratory Technicians pursuant to Circular dated 11.4.1990. Thereafter they have been continued in service by giving them technical breaks. The petitioners sought to rely on the Model Standing Orders to contend that as they had completed 240 days of regular service in the year, they ought to be regularised. It is also sought to be contended that their appointment should be treated as appointment on probation and consequently also they should be regularised and should not be kept on ad hoc basis for the long period of 12 years.

. On the other hand on behalf of the Respondent

Corporation, it was contended that the Petitioners were appointed against the post reserved for backward class categories. There was a backlog and as the backlog could not be filled in the Petitioners were continued till the filing of the backlog. That backlog has now been filled in. Therefore, merely because the Petitioners were continued against the post reserved for backward class, they cannot claim right to regularisation. It is also pointed out that there are recruitment rules in force and therefore, the petitioner can not contend that they ought to be regularised without following recruitment rules. The learned Industrial Court after considering the contentions found that the appointment of the Petitioner was purely ad hoc and temporary till the regular candidate was selected and in these circumstances, did not find any merit in the complaint and dismissed the same. It is this order which is subject matter of the present petition.

. Having heard learned counsel, in my opinion, it is not possible to interfere with the impugned order. The Petitioners admittedly in terms of the circular were appointed for the temporary period of four months. That appointment has been continued from time to time with technical breaks. The stand of the respondent was that the Petitioners were appointed against the post reserved and as such

could not have been regularly appointed against the said post. The law on the point is clear that once the posts are reserved then against the said posts open candidates cannot be appointed. The Petitioners therefore, cannot contend that their appointment ought to be regularised because of the long service. The grievance of the Petitioners that they have been discriminated in as much as the juniors to them have been appointed against the open post and for that purpose reference is made to the select list which was displayed pursuant to interviews held on 8.8.1991, 9.8.1991 and 10.8.1991. Firstly this issue apparently was not raised in the complaint. The complaint was filed in the year 1999. The list itself discloses that it was pursuant to the interviews. Whether the petitioners participated in the interview is not known. If the petitioners were not selected, they cannot after eight years challenge the selection of the other candidates. At any rate, those other candidates are not parties to the complaint. That contention therefore, cannot be accepted.

. However, considering that the petitioners have been working for the long period, the respondents Corporation in terms of the accepted law ought not to replace the ad hoc candidate by another ad hoc candidate. In other words, if there is vacancy available which is meant for reserved candidate,

then the petitioner or for that matter for a regular candidate, the petitioner ought not to be displaced until a regular candidate selected by due process of law becomes available. The second concession that can be made in favour of the petitioners is that considering the long years of service, if the posts are advertised and to be filled as per recruitment rules, then bar of age qualification should not be operated against them considering their long service with the Respondent Corporation. They will be considered provided they have other requisite qualifications excluding the age.

. With above observations, petition stands disposed of. Rule discharged. No order as to costs.

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(F.I. REBELLO,J.)